

Message

From: Paula Maccabee [pmaccabee@justchangelaw.com]
Sent: 10/8/2015 8:35:26 PM
To: Wester, Barbara [wester.barbara@epa.gov]
Subject: Re: response to inquiry to epa, 9/18/15
Attachments: (2015 7 17)_TC 2014 303d_FDL.pdf

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Thanks, Barbara,

Has the EPA made a decision yet on how to respond to the State of Minnesota's legislation purporting to preclude the State from compliance with Clean Water Act section 303(d) with respect to wild rice waters?

I was not sure in reading the attached letter from EPA to Chair Diver on July 17, 2015 whether or how the EPA had decided to respond to this legislation. As I'm sure you aware, various documents pertaining to a preliminary listing of wild rice impaired waters by the Minnesota Pollution Control Agency were obtained by WaterLegacy under the Data Practices Act and have been provided to EPA among the exhibits to our Petition for Withdrawal of NPDES Program Delegation.

In terms of our request for documents, WaterLegacy is only requesting those comments from EPA on the Minnesota 2014 303(d) that pertain either to listing of wild rice waters impaired due to excessive sulfates or listing of mercury-impaired waters. If there are further EPA comments available on either of these topics, we would respectfully request copies of documents reflecting these comments.

Thank you for your assistance.

Best regards,
 Paula Maccabee, Esq.
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Advocacy Director/Counsel for WaterLegacy

From: Barbara Wester <wester.barbara@epa.gov>
Date: Thursday, October 8, 2015 at 3:14 PM
To: Paula Maccabee <pmaccabee@justchangelaw.com>
Subject: response to inquiry to epa, 9/18/15

hi paula -- i am responding to your email message to paul proto, appended below.

epa is in the process of completing its review of the minnesota 2014 clean water act 303(d) list, which includes the consideration of the assessment of wild rice production waters. we expect to provide our decision document to all interested parties once it is final.

we recently completed a tribal consultation on our review of the state's list. the invitation is appended for your information. a response to issues raised during consultation will be included in our decision document for the state's 2014 list.

we have responded to issues regarding data for waters potentially impaired for mercury in a response to consultation with tribes held on minnesota's 2014 revisions to the statewide mercury total maximum daily load. i am attaching this document also.

in response to your request for comments provided to MPCA regarding the state's list, including efforts to assess wild rice production waters, please find the major comments EPA provided to the state. if your request is meant as a larger search for documents under the freedom of information act, please clarify.

let me know if you need any further information at this time.

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From: Paula Maccabee [<mailto:pmaccabee@justchangelaw.com>]

Sent: Friday, September 18, 2015 5:18 PM

To: Proto, Paul

Subject: Minnesota Section 303(d) List - Concerns about Mining Influence and Protection of Wild Rice Waters and Mercury-Impaired Waters

Hi Paul,

I was wondering what the status is regarding EPA's review of Minnesota's 2014 Section 303(d) list, particularly as it pertains to wild rice waters and mercury-impaired waters. Although we received the EPA's July 13, 2013 comments on the MPCA's 2012 draft impaired waters listing and the attached June 5, 2014 acknowledgement of WaterLegacy's comments on the MPCA's proposed 2014 Section 303(d) list, we have not received any further analysis of the issues we raised regarding wild rice waters and mercury impaired waters.

If you haven't already seen these documents, I wanted to make sure you had a chance to review WaterLegacy's Petition for Withdrawal of Program Delegation from the State of Minnesota for NPDES Permits Related to Mining Facilities. Our petition raises a number of issues regarding the State's non-compliance with Clean Water Act requirements, discussing concerns about failure to list wild rice waters impaired due to sulfate pollution in Part II, which begins on page 21 of the Petition.

We also include among the supporting Exhibits to this Petition several documents pertinent to the issue of listing wild rice waters impaired due to excessive sulfates. Exhibit 18, on p. 398 contains the legislation enacted by the Minnesota Legislature this year that precludes compliance with Section 303(d) requirements. Exhibit 19, pp. 399-414, contains documents WaterLegacy obtained from the MPCA through a Data Practices Act request pertaining to the listing of wild rice impaired waters. For your convenience, copies of WaterLegacy's Petition, Table of Exhibits and the full Exhibits themselves have also been uploaded to DropBox, where they are available at https://www.dropbox.com/sh/wkpf9ze32f0xlkb/AAC3sWkO10HnK_LMgPud808qa?dl=0.

I would request copies of any communication and comments EPA has prepared or provided regarding the MPCA's 2014(d) Section 303(d) list.

I would also ask whether it would be helpful for your office to receive more detailed information about mercury impairments in the waters that are downstream of the proposed PolyMet NorthMet project. WaterLegacy and others requested additional listings of mercury-impaired waters in 2014 and documented the basis for our requests using various sources of mercury data, as reflected in the attached letter and spreadsheet. We are aware of additional mercury sampling data collected since the PolyMet SDEIS, which we could provide to you if you are continuing to review the adequacy of listings of mercury-impaired waters.

Please feel free to call me at 651-646-8890 or provide an update by email. I look forward to hearing from you, and would be happy to answer any questions you may have.

Sincerely yours,

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